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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,094	07/01/2003	Isaac Weiser	03-11987	5817

25189 7590 07/14/2006

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EXAMINER

GARCIA, ERNESTO

ART UNIT PAPER NUMBER

3679

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/612,094	Applicant(s) WEISER ET AL.	
	Examiner Ernesto Garcia	Art Unit 3679	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 4-7 and 9-11.
 Claim(s) withdrawn from consideration: 1-3 and 12-16.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.



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Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that Moore fails to disclose the features of "displaceably suspended manner" and "at least one flexible connecting member comprising a coil spring". Applicants also argue that Higdon or Moore does not have any express or even implied suggestion to combine the presently claimed elements of claims 4 and 10. In response, the arguments are not persuasive because the language "displaceably suspended" is not a particular feature but rather an intended purpose of the one or more appendages. Applicants should be aware that the scope of the claims does not require that the one or more appendages be displaceably suspended from the body. In any event, it is evident from the primary reference that these features are still taught. Further, applicants are attacking the references individually when the combined teachings anticipate the claimed invention. With respect to the express or implied suggestion to combine the claimed elements of claims 4 and 10, applicants should note that the examiner has provided the suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Applicants argue that Moore is "configured in a manner to achieve exactly the opposite structure from that of the present invention". In response, applicants are attacking Moore individually when the combined teachings of both Higdon and Moore anticipate the claimed invention. Applicants should not that the examiner is not relying on Moore to teach "at least one flexible connecting member comprising a coil spring" or "for securement to project in a displaceably suspended manner", but rather the prongs as claimed.

With respect to claims 5-7, 10, and 11, the examiner does not see a different argument than that argued above.

With respect to Del Mas, applicants argue that the reference teaches "armholes 15 are adapted to receive ... arm stumps comprising plugs 16", and that the term "stumps" are low aspect ratio elements by their definition. In response, the argument is not persuasive as the armholes are equivalent to applicants' apertures and the plugs 16 are equivalent to applicants' connecting structures. The fact that the stumps, i.e., the plugs, are low aspect ratio elements by their definition does not render the invention non-obvious when the size of the components has not been claimed or do the claims establish high aspect ratio elements.

Applicants further argue that the final rejection is premature and should be withdrawn on the basis that applicants have submitted a statement under MPEP 706.02(I). The argument is not persuasive because even though the statement was submitted there is no recordation in the Office that the patent 6,599,160, has an assignment. According to our records no reel/frame number has been associated with the patent and applicants have not provided the reel and frame number associated with the '160 patent to show the contrary.